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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/993,669      | 11/27/2001  | Ann-Kristin Karlsson | 06275-160002        | 1605             |

26161 7590 12/23/2002

FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

MAIER, LEIGH C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1623

DATE MAILED: 12/23/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/993,669**Applicant(s)  
**Karlsson**Examiner  
**Leigh Maier**Art Unit  
**1623**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Dec 4, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s):

See attached Advisory action.

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 3, 4, 8-12, 14, and 30-55

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Art Unit: 1623

### ADVISORY ACTION

Based on the amendments, (1) the objection to claims 10, 11, 53, and 55 and (2) rejection of claims 10 and 11 under 35 U.S.C 102(e) would be withdrawn. The deletion of the "dry" limitation in claim 3 makes it eligible for rejection under 102(b) over O'Neill (US 3,962,430). The other rejections would be maintained for reasons of record. Jakupovic clearly contemplates respirable powders and suspensions. The examiner reiterates that the claims are recited in product-by-process form. Applicant has not yet cited any way that these heat-sterilized products differ from those sterilized by other known methods.

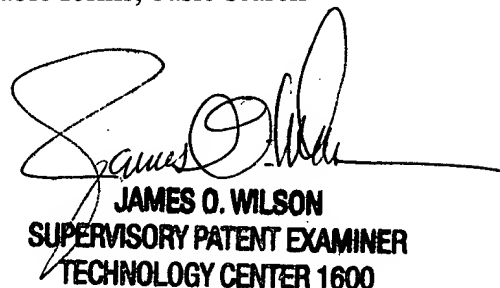
#### *Examiner's hours, phone & fax numbers*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (703) 308-4525. The examiner can normally be reached on Tuesday, Wednesday, or Friday 7:00 to 3:30 (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson (703) 308-4624, may be contacted. The fax phone number for Group 1600, Art Unit 1623 is (703) 308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-1235.

Visit the U.S. PTO's site on the World Wide Web at <http://www.uspto.gov>. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more.

  
**JAMES O. WILSON**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

Leigh C. Maier  
Patent Examiner  
December 20, 2002